

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

HOWARD PENCE, §
§
Plaintiff, § CIVIL ACTION NO. 4:22-CV-00433-
v. § SDJ-AGD
§
RICKY STOVER, ET AL., §
§
Defendants. §
§

**MEMORANDUM ADOPTING THE REPORT AND
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the Report and Recommendation of the United States Magistrate Judge (“Report”), this matter having been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On September 13, 2023, the Report and Recommendation of the Magistrate Judge, (Dkt. #32), was entered containing proposed findings of fact and recommendation that Plaintiff’s Opposed Motion to Dismiss Pursuant to Fed. R. Civ. P. 41(a)(2), (Dkt. #18), be granted, Defendant’s Motion for Leave to File Attorneys’ Fees Evidence, (Dkt. #25), be granted, Plaintiff’s claims be dismissed without prejudice, Defendant’s cross-claim be dismissed without prejudice, and Defendant be awarded reasonable attorneys’ fees in the amount of \$18,500. Defendant timely filed an objection to the Report (Dkt. #33).

Having assessed the Report, the record in this case, and having conducted a de novo review of the objections, the Court determines that the objections are without merit as to the ultimate recommendation of the Magistrate Judge.¹ The Court hereby

¹ The Court notes that Defendant’s objections do not pertain to the ultimate conclusions of the Court. Rather, Defendant objects to the factual background to the extent it consists of facts rather than mere

adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

It is therefore **ORDERED** that Plaintiff's Opposed Motion to Dismiss Pursuant to Fed. R. Civ. P. 41(a)(2), (Dkt. #18), is **GRANTED**. The Court further **ORDERS** that Defendant's Motion for Leave to File Attorneys' Fees Evidence, (Dkt. #25), is **GRANTED**. The Court further **ORDERS** that Plaintiff's claims are **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction. The Court further **ORDERS** that Defendant's cross-claim is **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction. Finally, the Court **ORDERS** that Defendant is awarded reasonable attorneys' fees in the amount of \$18,500.

So ORDERED and SIGNED this 28th day of March, 2024.



SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE

allegations (Dkt. # 33). The Magistrate Judge cited to Plaintiff's Amended Complaint with respect to each statement, making clear that the statements were allegations rather than factual statements (Dkt. # 32). For the sake of clarity, the Court holds that the factual history consists of allegations stemming from Plaintiff's Amended Complaint.